

Introduced by Senator Margett

February 22, 2008

An act to amend Section 290.46 of the Penal Code, relating to sex offenders.

LEGISLATIVE COUNSEL'S DIGEST

SB 1706, as introduced, Margett. Sex offenders.

Existing law requires the Department of Justice to make available information concerning persons who are required to register as sex offenders to the public via an Internet Web site, as specified.

This bill would make a technical, nonsubstantive change to those provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 290.46 of the Penal Code is amended to
2 read:
3 290.46. (a) (1) On or before the dates specified in this section,
4 the Department of Justice shall make available information
5 concerning persons who are required to register pursuant to Section
6 290 to the public via an Internet Web site as specified in this
7 section. The department shall update the Internet Web site on an
8 ongoing basis. All information identifying the victim by name,
9 birth date, address, or relationship to the registrant shall be
10 excluded from the Internet Web site. The name or address of the
11 person's employer and the listed person's criminal history other
12 than the specific crimes for which the person is required to register

1 shall not be included on the Internet Web site. The Internet Web
2 site shall be translated into languages other than English as
3 determined by the department.

4 (2) (A) On or before July 1, 2010, the Department of Justice
5 shall make available to the public, via an Internet Web site as
6 specified in this section, as to any person described in subdivisions
7 (b), (c), or (d), the following information:

8 (i) The year of conviction of his or her most recent offense
9 requiring registration pursuant to Section 290.

10 (ii) The year he or she was released from incarceration for that
11 offense.

12 (iii) Whether he or she was subsequently incarcerated for any
13 other felony, if that fact is reported to the department. If the
14 department has no information about a subsequent incarceration
15 for any felony, that fact shall be noted on the Internet Web site.

16 However, no year of conviction shall be made available to the
17 public unless the department also is able to make available the
18 corresponding year of release of incarceration for that offense, and
19 the required notation regarding any subsequent felony.

20 (B) (i) Any state facility that releases from incarceration a
21 person who was incarcerated because of a crime for which he or
22 she is required to register as a sex offender pursuant to Section
23 290 shall, within 30 days of release, provide the year of release
24 for his or her most recent offense requiring registration to the
25 Department of Justice in a manner and format approved by the
26 department.

27 (ii) Any state facility that releases a person who is required to
28 register pursuant to Section 290 from incarceration whose
29 incarceration was for a felony committed subsequently to the
30 offense for which he or she is required to register shall, within 30
31 days of release, advise the Department of Justice of that fact.

32 (iii) Any state facility that, prior to January 1, 2007, released
33 from incarceration a person who was incarcerated because of a
34 crime for which he or she is required to register as a sex offender
35 pursuant to Section 290 shall provide the year of release for his or
36 her most recent offense requiring registration to the Department
37 of Justice in a manner and format approved by the department.
38 The information provided by the Department of Corrections and
39 Rehabilitation shall be limited to information that is currently
40 maintained in an electronic format.

1 (iv) Any state facility that, prior to January 1, 2007, released a
2 person who is required to register pursuant to Section 290 from
3 incarceration whose incarceration was for a felony committed
4 subsequently to the offense for which he or she is required to
5 register shall advise the Department of Justice of that fact in a
6 manner and format approved by the department. The information
7 provided by the Department of Corrections and Rehabilitation
8 shall be limited to information that is currently maintained in an
9 electronic format.

10 (3) The *State* Department of Mental Health shall provide to the
11 Department of Justice Sex Offender Tracking Program the names
12 of all persons committed to its custody pursuant to Article 4
13 (commencing with Section 6600) of Chapter 2 of Part 2 of Division
14 6 of the Welfare and Institutions Code, within 30 days of
15 commitment, and shall provide the names of all of those persons
16 released from its custody within five working days of release.

17 (b) (1) On or before July 1, 2005, with respect to a person who
18 has been convicted of the commission or the attempted commission
19 of any of the offenses listed in, or who is described in, paragraph
20 (2), the Department of Justice shall make available to the public
21 via the Internet Web site his or her name and known aliases, a
22 photograph, a physical description, including gender and race, date
23 of birth, criminal history, prior adjudication as a sexually violent
24 predator, the address at which the person resides, and any other
25 information that the Department of Justice deems relevant, but not
26 the information excluded pursuant to subdivision (a).

27 (2) This subdivision shall apply to the following offenses and
28 offenders:

29 (A) Section 207 committed with intent to violate Section 261,
30 286, 288, 288a, or 289.

31 (B) Section 209 committed with intent to violate Section 261,
32 286, 288, 288a, or 289.

33 (C) Paragraph (2) or (6) of subdivision (a) of Section 261.

34 (D) Section 264.1.

35 (E) Section 269.

36 (F) Subdivision (c) or (d) of Section 286.

37 (G) Subdivision (a), (b), or (c) of Section 288, provided that the
38 offense is a felony.

39 (H) Subdivision (c) or (d) of Section 288a.

40 (I) Section 288.3, provided that the offense is a felony.

1 (J) Section 288.5.

2 (K) Subdivision (a) or (j) of Section 289.

3 (L) Section 288.7.

4 (M) Any person who has ever been adjudicated a sexually
5 violent predator as defined in Section 6600 of the Welfare and
6 Institutions Code.

7 (c) (1) On or before July 1, 2005, with respect to a person who
8 has been convicted of the commission or the attempted commission
9 of any of the offenses listed in paragraph (2), the Department of
10 Justice shall make available to the public via the Internet Web site
11 his or her name and known aliases, a photograph, a physical
12 description, including gender and race, date of birth, criminal
13 history, the community of residence and ZIP Code in which the
14 person resides or the county in which the person is registered as a
15 transient, and any other information that the Department of Justice
16 deems relevant, but not the information excluded pursuant to
17 subdivision (a). On or before July 1, 2006, the Department of
18 Justice shall determine whether any person convicted of an offense
19 listed in paragraph (2) also has one or more prior or subsequent
20 convictions of an offense listed in paragraph (2) of subdivision (a)
21 of Section 290, and, for those persons, the Department of Justice
22 shall make available to the public via the Internet Web site the
23 address at which the person resides. However, the address at which
24 the person resides shall not be disclosed until a determination is
25 made that the person is, by virtue of his or her additional prior or
26 subsequent conviction of an offense listed in paragraph (2) of
27 subdivision (a) of Section 290, subject to this subdivision.

28 (2) This subdivision shall apply to the following offenses:

29 (A) Section 220, except assault to commit mayhem.

30 (B) Paragraph (1), (3), or (4) of subdivision (a) of Section 261.

31 (C) Paragraph (2) of subdivision (b), or subdivision (f), (g), or
32 (i), of Section 286.

33 (D) Paragraph (2) of subdivision (b), or subdivision (f), (g), or
34 (i), of Section 288a.

35 (E) Subdivision (b), (d), (e), or (i) of Section 289.

36 (d) (1) On or before July 1, 2005, with respect to a person who
37 has been convicted of the commission or the attempted commission
38 of any of the offenses listed in, or who is described in, this
39 subdivision, the Department of Justice shall make available to the
40 public via the Internet Web site his or her name and known aliases,

1 a photograph, a physical description, including gender and race,
2 date of birth, criminal history, the community of residence and
3 ZIP Code in which the person resides or the county in which the
4 person is registered as a transient, and any other information that
5 the Department of Justice deems relevant, but not the information
6 excluded pursuant to subdivision (a) or the address at which the
7 person resides.

8 (2) This subdivision shall apply to the following offenses and
9 offenders:

10 (A) Subdivision (a) of Section 243.4, provided that the offense
11 is a felony.

12 (B) Section 266, provided that the offense is a felony.

13 (C) Section 266c, provided that the offense is a felony.

14 (D) Section 266j.

15 (E) Section 267.

16 (F) Subdivision (c) of Section 288, provided that the offense is
17 a misdemeanor.

18 (G) Section 288.3, provided that the offense is a misdemeanor.

19 (H) Section 626.81.

20 (I) Section 647.6.

21 (J) Section 653c.

22 (K) Any person required to register pursuant to Section 290
23 based upon an out-of-state conviction, unless that person is
24 excluded from the Internet Web site pursuant to subdivision (e).
25 However, if the Department of Justice has determined that the
26 out-of-state crime, if committed or attempted in this state, would
27 have been punishable in this state as a crime described in
28 subparagraph (A) of paragraph (2) of subdivision (a) of Section
29 290, the person shall be placed on the Internet Web site as provided
30 in subdivision (b) or (c), as applicable to the crime.

31 (e) (1) If a person has been convicted of the commission or the
32 attempted commission of any of the offenses listed in this
33 subdivision, and he or she has been convicted of no other offense
34 listed in subdivision (b), (c), or (d) other than those listed in this
35 subdivision, that person may file an application with the
36 Department of Justice, on a form approved by the department, for
37 exclusion from the Internet Web site. If the department determines
38 that the person meets the requirements of this subdivision, the
39 department shall grant the exclusion and no information concerning
40 the person shall be made available via the Internet Web site

1 described in this section. He or she bears the burden of proving
2 the facts that make him or her eligible for exclusion from the
3 Internet Web site. However, a person who has filed for or been
4 granted an exclusion from the Internet Web site is not relieved of
5 his or her duty to register as a sex offender pursuant to Section
6 290 nor from any otherwise applicable provision of law.

7 (2) This subdivision shall apply to the following offenses:

8 (A) A felony violation of subdivision (a) of Section 243.4.

9 (B) Section 647.6, if the offense is a misdemeanor.

10 (C) (i) An offense for which the offender successfully
11 completed probation, provided that the offender submits to the
12 department a certified copy of a probation report, presentencing
13 report, report prepared pursuant to Section 288.1, or other official
14 court document that clearly demonstrates that the offender was
15 the victim's parent, stepparent, sibling, or grandparent and that the
16 crime did not involve either oral copulation or penetration of the
17 vagina or rectum of either the victim or the offender by the penis
18 of the other or by any foreign object.

19 (ii) An offense for which the offender is on probation at the
20 time of his or her application, provided that the offender submits
21 to the department a certified copy of a probation report,
22 presentencing report, report prepared pursuant to Section 288.1,
23 or other official court document that clearly demonstrates that the
24 offender was the victim's parent, stepparent, sibling, or grandparent
25 and that the crime did not involve either oral copulation or
26 penetration of the vagina or rectum of either the victim or the
27 offender by the penis of the other or by any foreign object.

28 (iii) If, subsequent to his or her application, the offender commits
29 a violation of probation resulting in his or her incarceration in
30 county jail or state prison, his or her exclusion, or application for
31 exclusion, from the Internet Web site shall be terminated.

32 (iv) For the purposes of this subparagraph, "successfully
33 completed probation" means that during the period of probation
34 the offender neither received additional county jail or state prison
35 time for a violation of probation nor was convicted of another
36 offense resulting in a sentence to county jail or state prison.

37 (3) If the department determines that a person who was granted
38 an exclusion under a former version of this subdivision would not
39 qualify for an exclusion under the current version of this
40 subdivision, the department shall rescind the exclusion, make a

1 reasonable effort to provide notification to the person that the
2 exclusion has been rescinded, and, no sooner than 30 days after
3 notification is attempted, make information about the offender
4 available to the public on the Internet Web site as provided in this
5 section.

6 (4) Effective January 1, 2012, no person shall be excluded
7 pursuant to this subdivision unless the offender has submitted to
8 the department documentation sufficient for the department to
9 determine that he or she has a SARATSO risk level of low or
10 moderate-low.

11 (f) The Department of Justice shall make a reasonable effort to
12 provide notification to persons who have been convicted of the
13 commission or attempted commission of an offense specified in
14 subdivision (b), (c), or (d), that on or before July 1, 2005, the
15 department is required to make information about specified sex
16 offenders available to the public via an Internet Web site as
17 specified in this section. The Department of Justice shall also make
18 a reasonable effort to provide notice that some offenders are
19 eligible to apply for exclusion from the Internet Web site.

20 (g) (1) A designated law enforcement entity, as defined in
21 subdivision (f) of Section 290.45, may make available information
22 concerning persons who are required to register pursuant to Section
23 290 to the public via an Internet Web site as specified in paragraph
24 (2).

25 (2) The law enforcement entity may make available by way of
26 an Internet Web site the information described in subdivision (c)
27 if it determines that the public disclosure of the information about
28 a specific offender by way of the entity's Internet Web site is
29 necessary to ensure the public safety based upon information
30 available to the entity concerning that specific offender.

31 (3) The information that may be provided pursuant to this
32 subdivision may include the information specified in subdivision
33 (b) of Section 290.45. However, that offender's address may not
34 be disclosed unless he or she is a person whose address is on the
35 Department of Justice's Internet Web site pursuant to subdivision
36 (b) or (c).

37 (h) For purposes of this section, "offense" includes the statutory
38 predecessors of that offense, or any offense committed in another
39 jurisdiction that, if committed or attempted to be committed in this
40 state, would have been punishable in this state as an offense listed

1 in subparagraph (A) of paragraph (2) of subdivision (a) of Section
2 290.

3 (i) Notwithstanding Section 6254.5 of the Government Code,
4 disclosure of information pursuant to this section is not a waiver
5 of exemptions under Chapter 3.5 (commencing with Section 6250)
6 of Title 1 of Division 7 of the Government Code and does not
7 affect other statutory restrictions on disclosure in other situations.

8 (j) (1) Any person who uses information disclosed pursuant to
9 this section to commit a misdemeanor shall be subject to, in
10 addition to any other penalty or fine imposed, a fine of not less
11 than ten thousand dollars (\$10,000) and not more than fifty
12 thousand dollars (\$50,000).

13 (2) Any person who uses information disclosed pursuant to this
14 section to commit a felony shall be punished, in addition and
15 consecutive to any other punishment, by a five-year term of
16 imprisonment in the state prison.

17 (k) Any person who is required to register pursuant to Section
18 290 who enters an Internet Web site established pursuant to this
19 section shall be punished by a fine not exceeding one thousand
20 dollars (\$1,000), imprisonment in a county jail for a period not to
21 exceed six months, or by both that fine and imprisonment.

22 (l) (1) A person is authorized to use information disclosed
23 pursuant to this section only to protect a person at risk.

24 (2) Except as authorized under paragraph (1) or any other
25 provision of law, use of any information that is disclosed pursuant
26 to this section for purposes relating to any of the following is
27 prohibited:

28 (A) Health insurance.

29 (B) Insurance.

30 (C) Loans.

31 (D) Credit.

32 (E) Employment.

33 (F) Education, scholarships, or fellowships.

34 (G) Housing or accommodations.

35 (H) Benefits, privileges, or services provided by any business
36 establishment.

37 (3) This section shall not affect authorized access to, or use of,
38 information pursuant to, among other provisions, Sections 11105
39 and 11105.3, Section 8808 of the Family Code, Sections 777.5
40 and 14409.2 of the Financial Code, Sections 1522.01 and 1596.871

1 of the Health and Safety Code, and Section 432.7 of the Labor
2 Code.

3 (4) (A) Any use of information disclosed pursuant to this section
4 for purposes other than those provided by paragraph (1) or in
5 violation of paragraph (2) shall make the user liable for the actual
6 damages, and any amount that may be determined by a jury or a
7 court sitting without a jury, not exceeding three times the amount
8 of actual damage, and not less than two hundred fifty dollars
9 (\$250), and attorney's fees, exemplary damages, or a civil penalty
10 not exceeding twenty-five thousand dollars (\$25,000).

11 (B) Whenever there is reasonable cause to believe that any
12 person or group of persons is engaged in a pattern or practice of
13 misuse of the information available via an Internet Web site
14 established pursuant to this section in violation of paragraph (2),
15 the Attorney General, any district attorney, or city attorney, or any
16 person aggrieved by the misuse is authorized to bring a civil action
17 in the appropriate court requesting preventive relief, including an
18 application for a permanent or temporary injunction, restraining
19 order, or other order against the person or group of persons
20 responsible for the pattern or practice of misuse. The foregoing
21 remedies shall be independent of any other remedies or procedures
22 that may be available to an aggrieved party under other provisions
23 of law, including Part 2 (commencing with Section 43) of Division
24 1 of the Civil Code.

25 (m) The public notification provisions of this section are
26 applicable to every person described in this section, without regard
27 to when his or her crimes were committed or his or her duty to
28 register pursuant to Section 290 arose, and to every offense
29 described in this section, regardless of when it was committed.

30 (n) On or before July 1, 2006, and every year thereafter, the
31 Department of Justice shall make a report to the Legislature
32 concerning the operation of this section.

33 (o) A designated law enforcement entity and its employees shall
34 be immune from liability for good faith conduct under this section.

35 (p) The Attorney General, in collaboration with local law
36 enforcement and others knowledgeable about sex offenders, shall
37 develop strategies to assist members of the public in understanding
38 and using publicly available information about registered sex
39 offenders to further public safety. These strategies may include,
40 but are not limited to, a hotline for community inquiries,

- 1 neighborhood and business guidelines for how to respond to
- 2 information posted on this Web site, and any other resource that
- 3 promotes public education about these offenders.

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